



Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Pat Danner
U. S. House of Representatives
1323 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Danner:

Thank you for the letter dated April 8, 1996, on behalf of your constituent, John G. Weedon, regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. Mr. Weedon expresses concern regarding the Commission's decision to redesignate the 800 MHz General Category Pool frequencies. Mr. Weedon also expresses concern about the proposed use of competitive bidding procedures to award future licenses on these frequencies.

On December 15, 1995, the Commission issued a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144, which addressed the treatment of the General Category. In the First Report and Order, the Commission determined that the overwhelming majority of General Category channels are used for SMR as opposed to non-SMR service. In fact, our licensing records indicate that there are three times as many SMR licensees using General Category channels as any other type of Part 90 licensee. The Commission therefore concluded that the most efficient use of the General Category channels would be to redesignate them exclusively for SMR use. Thus, the First Report and Order provided that in the future, only SMR service providers will be eligible for new licenses in the General Category pool. Existing non-SMR licensees on General Category channels will continue to operate under their current authorizations, however, and will be fully protected from interference by new SMR licensees. In addition, the Commission's decision specifies that SMR service providers are no longer eligible to apply for licenses on Business or Industrial/Land Transportation channels. As a result, we anticipate that the First Report and Order will make more spectrum available for licensees such as Mr. Weedon, who are currently eligible, and will continue to be eligible, to apply in the Business and Industrial/Land Transportation categories. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses

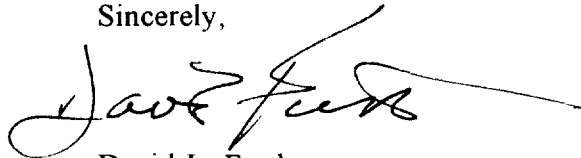
The Honorable Pat Danner

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satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable. As noted above, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a long horizontal flourish extending to the right.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Enclosure

PAT DANNER
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April 8, 1996

Judith Harris
Director, Office of Legislative and
Intergovernmental Affairs
Federal Communications Commission
Room 808
1919 M Street, Northwest
Washington, D.C. 20554

Dear Judith:

Enclosed is a copy of a letter from a constituent of mine regarding the recent redesignation of the 800 Mhz General Category Pool to commercial-only service, as well as the proposed implementation of the competitive bidding process.

Inasmuch as Mr. Weedin has some specific questions and concerns about this redesignation, (and the requisite authority to do so) I am requesting that you examine and respond to his concerns. Please direct your response to me so that I may forward it to Mr. Weedin.

Thank you very much for your assistance in this matter.

Best regards

Pat Danner
Member of Congress

PD/cab
Enclosure

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John G. Weedin
5107 NE 39th St.
Kansas City, MO 64117

Dear Congresswoman Danner:

Re: FCC PR Docket No. 93-144, Redisignation of the 800 Mhz
General Category Pool to a Commercial-only Service and
Proposed Implementation of the Competitive Bidding Processes

In the above-referenced proceeding, the FCC has reallocated 150 channels in the 800 Mhz band that have been shared jointly by both private and commercial licensees for more than twenty years. The FCC's justification for this was that the "overwhelming majority" of channels were used for commercial operations. In fact, while there are a significant number of commercial subscriber-based operations, there are also more than 3,400 non-commercial licensees. We happen to be one of the latter who do not use the spectrum to generate business revenues.

We do communications consulting as a part-time business. Our 800 Mhz frequency is used for local area communications as we research our projects. Now that the FCC has reclassified the band for commercial use, it has, simultaneously, provided itself authority to conduct auctions and has proposed to do so. These actions are extremely predatory to the spectrum rights that were originally available to all players in the market. We should retain a fairly reasonable expectation that, as a non-commercial entity operating a radio system in a spectrum band where there is little opportunity for mutually exclusive applications, we would not be subjected to federally forced competitive bidding processes.

We do not support - nor do we believe you should support - FCC regulatory actions that would seem to exceed the FCC's auction authority as set forth in the Omnibus Budget Reconciliation Act of 1993. In granting authority to the FCC to award such authorizations by auction, we understood that Congress expressly limited such authority to situations involving mutually exclusive applications. Further, section 309 (j)(6)(E) of the 1993 Budget Act directed the FCC to make every effort to avoid mutually exclusive situations by use of engineering solutions, such as frequency coordination. The opportunity to generate revenues was not to be used as justification for ignoring this congressional directive.

We respectfully request that you urge the FCC to reverse its recent redesignation of the 800 Mhz General Catagory pool. That action alone would preclude the FCC from instituting auction processes in a band that is heavily encumbered by both private and commercial licenses. We are at a loss to understand federal government action that would expose our firm to having to compete for spectrum through auctions when our assigned channels were validly licensed in accordance with existing policy. While big business may be good for the country and the economy, we think that the original intent of the constitution was to protect the rights of individuals.

Your consideration and assistance will be most appreciated.

Sincerely,

John D. Weed

Commercial Wireless Division
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